

VOLUME 8

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP, JUDGE

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	
)	
VS.)	NO. CR 08-0730 WHA
)	
IVAN CERNA, ET AL.)	THURSDAY, MARCH 11, 2010
)	SAN FRANCISCO, CALIFORNIA
DEFENDANTS.)	
)	

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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PROCEEDINGS; THURSDAY, MARCH 11, 2010

THE COURT: ON THE RECORD. WE'RE HANDING OUT A SUPPLEMENTAL INSTRUCTION ON ENTRAPMENT. I'M GOING TO GIVE YOU A MOMENT TO READ IT. THIS IS AFTER REVIEWING YOUR BRIEFS AND ALSO DOING OUR OWN HOMEWORK.

TELL ME WHEN YOU'RE READY.

MR. LEUNG: GOVERNMENT'S READY, YOUR HONOR.

MR. CHAZIN: IF I COULD HAVE JUST A COUPLE MORE MOMENTS, YOUR HONOR?

THE COURT: ALL RIGHT. PLEASE TAKE YOUR TIME.

THE INTERPRETER: YOUR HONOR, I WOULD LIKE TO PUT ON THE RECORD, IT'S MELINDA BASKER, INTERPRETER, AND ALSO LATER ON NINA SAFDIE INTERPRETING. SHE'S ALSO BEEN SWORN AS WELL.

MR. CHAZIN: I'M READY, YOUR HONOR.

THE COURT: ALL RIGHT. LET'S HEAR FROM BOTH SIDES ON THE SUPPLEMENTAL INSTRUCTION THAT THE COURT PROPOSES TO GIVE IN RESPONSE TO THE JURY'S QUESTIONS.

MR. LEUNG: YOUR HONOR, THE GOVERNMENT DOESN'T HAVE AN OBJECTION. WE WOULD ASK FOR A FURTHER EXPLANATION IN PARAGRAPH 3. PARAGRAPH 3 BEGINS "WITH RESPECT TO PREDISPOSITION." AT THE END OF THAT PARAGRAPH, WE WOULD RESPECTFULLY ASK THE COURT TO ALSO INSTRUCT THE JURY THAT IT MAY CONSIDER THE DEFENDANT'S CONDUCT FOLLOWING HIS INITIAL CONTACT WITH A GOVERNMENT AGENT WHEN DETERMINING WHETHER THE DEFENDANT

1 WAS PREDISPOSED. WE WOULD REFER THE COURT TO THE COMMENT OF
2 MODEL INSTRUCTION 6.2 FOR THAT PROPOSITION.

3 **THE COURT:** WHAT DO YOU SAY TO THAT, MR. CHAZIN?

4 **MR. CHAZIN:** COULD YOU REPEAT THAT ONCE MORE, WHAT
5 YOUR PROPOSAL IS?

6 **MR. LEUNG:** THE PROPOSAL WOULD BE TO ADVISE THE JURY
7 THAT IN DETERMINING PREDISPOSITION, THE JURY CAN CONSIDER
8 CONDUCT THAT OCCURRED AFTER THE INITIAL CONTACT WITH A
9 GOVERNMENT AGENT.

10 **MR. CHAZIN:** I WOULD DEFINITELY OBJECT TO THAT. I
11 BELIEVE, NUMBER ONE, IT'S A DEPARTURE FROM WHAT WAS ALREADY
12 GIVEN AND INCONSISTENT WITH THE LAW.

13 WITH REGARDS TO PREDISPOSITION, IF THERE IS ANY LACK
14 OF -- THE OPERATIVE PART OF THAT IS, IF THERE'S -- UP TO THE
15 TIME OF THE FIRST CONTACT WITH THE GOVERNMENT AGENT, IF THERE
16 WAS NO SHOWING OF ANY PREDISPOSITION, THEN ENTRAPMENT -- THE
17 GOVERNMENT HASN'T MET ITS BURDEN OF PROOF. SO WHAT HAPPENED
18 AFTER THAT WITH REGARD TO PREDISPOSITION SHOULD NOT BE --

19 **THE COURT:** I'M GOING TO TELL YOU THE ANSWER ON THAT.
20 I DISAGREE WITH BOTH OF YOU. FIRST, THE GOVERNMENT -- I'M NOT
21 GOING TO GIVE THAT SUPPLEMENTAL INSTRUCTION FOR A DIFFERENT
22 REASON, THE ONE THE GOVERNMENT ASKED FOR. MR. CHAZIN, YOU ARE
23 WRONG ON YOUR THEORY.

24 WHAT IF, FOR EXAMPLE, THE DEFENDANT, AFTER THE FIRST
25 EVENT, HAD MADE A STATEMENT TO SOMEBODY THAT SAID, I HAVE BEEN

1 DOING CAR THEFTS AND EXPORTING THEM FOR THE LAST 25 YEARS, I'M
2 SO GLAD I FINALLY GOT A NEW OUTLET, NOW I CAN DOUBLE MY PROFITS?
3 THAT WOULD BE CONDUCT AFTER THE FIRST INSTANCE, BUT IT WOULD BE
4 DIRECT ADMISSIONS AND TESTIMONY RELATING BACK TO PRIOR TO THE
5 GOVERNMENT COMING IN AND TRYING TO ENTRAP THE GUY. SO THAT
6 WOULD BE CONDUCT AFTER THE FACT, BUT IT WOULD BE HIGHLY
7 PROBATIVE OF WHAT HAPPENED BEFORE THE FACT. SO YOU'RE JUST
8 WRONG ON THAT STATEMENT.

9 **MR. CHAZIN:** LET ME ADDRESS THAT, YOUR HONOR, BECAUSE
10 I'M ACTUALLY -- I'M NOT NECESSARILY DISAGREEING WITH YOU ON
11 THIS, BUT THE KEY IS YOU ARE REFERRING TO A STATEMENT MADE AFTER
12 THE FIRST CONTACT WITH THE AGENT, BUT THE STATEMENT, THE
13 ADMISSION BY THAT DEFENDANT IS REFERRING BACK TO CONDUCT THAT
14 WAS BEFORE. SO IT'S A MATTER OF CONDUCT OF EVIDENCE OF
15 PREDISPOSITION BEFORE.

16 **THE COURT:** YES. ALL RIGHT. SO IF A STATEMENT -- IF
17 A STATEMENT COULD RELATE BACK, A JURY COULD SEE A PATTERN OF
18 CONDUCT THAT WAS SO CLEARCUT THAT IT COULD DECIDE THAT ALSO
19 RELATES BACK. BUT THE REASON I'M NOT GOING TO GIVE THE
20 INSTRUCTION IS IT'S NOT CLOSE ENOUGH TO THE QUESTION THE JURY
21 ASKED.

22 I'M NOT GOING TO GO BACK AND OPEN ALL THE
23 INSTRUCTIONS ON THE ENTRAPMENT EXCEPT AS NECESSARY TO ANSWER THE
24 QUESTION. I'M NOT GOING TO GIVE THE SUPPLEMENTAL INSTRUCTION,
25 BUT IT'S FOR A DIFFERENT REASON THAN THE ONE SUGGESTED BY

1 MR. CHAZIN.

2 MR. CHAZIN: YOUR HONOR, WITH REGARD TO THE LAST
3 SENTENCE, I DID HAVE A REQUEST. IT SEEMS TO BE PHRASED IN THE
4 NEGATIVE. I'M WONDERING IF WE COULD STATE THAT MORE IN THE
5 AFFIRMATIVE.

6 THE COURT: WHERE IT SAYS, "KEEP IN MIND THE REST OF
7 THE INSTRUCTIONS"?

8 MR. CHAZIN: NO, WHERE IT SAYS, "SO IF YOU FIND
9 PREDISPOSITION UNPROVEN," FOR THE EARLIEST COUNTS, THAT'S THE
10 THIRD PARAGRAPH, LAST SENTENCE.

11 THE COURT: YES.

12 MR. CHAZIN: I'M WONDERING IF THERE'S A WAY TO STATE
13 THAT A LITTLE MORE AFFIRMATIVELY? "IF YOU FIND THAT THE
14 GOVERNMENT HAS NOT MET ITS BURDEN OF PROVING THAT THE DEFENDANT
15 WAS PREDISPOSED --"

16 THE COURT: THAT'S GOT A NEGATIVE IN THERE, TOO.
17 THIS IS A SENTENCE THAT HELPS YOU. "IF YOU FIND PREDISPOSITION
18 UNPROVEN IN THE EARLIEST COUNT, THAT FINDING MUST APPLY TO ALL
19 COUNTS." THAT'S EXACTLY WHAT YOU WANT, ISN'T IT?

20 MR. CHAZIN: THE CONCEPT, WE'RE TOTALLY IN AGREEMENT.
21 I'M JUST WONDERING, THE WORD, "UNPROVEN."

22 THE COURT: THE BURDEN IS ON THE GOVERNMENT. I THINK
23 THIS IS FINE. I'M NOT GOING TO CHANGE THAT.

24 MR. CHAZIN: OKAY.

25 THE COURT: ANYTHING MORE BY THE GOVERNMENT?

1 **MR. LEUNG:** NO, YOUR HONOR.

2 **THE COURT:** ANYTHING MORE BY MR. CHAZIN?

3 **MR. CHAZIN:** YES, YOUR HONOR. WITH REGARD TO THE
4 SECOND PART, YOU KNOW, THE FOLLOWING, "WITH REGARD TO THE
5 INDUCEMENT," FIRST OF ALL, I WANT TO MAKE CLEAR IT'S IMPORTANT
6 TO NOTE THAT IN '93 THE LAW CHANGED PURSUANT -- UNDER FOLLOWING
7 JACOBSON TO THAT WHICH THEN CREATED THE CONCEPT THAT IF YOU FIND
8 THE DEFENDANT WAS ENTRAPPED AS TO THE FIRST COUNT, THEN HE WAS
9 NECESSARILY ENTRAPPED TO SUBSEQUENT COUNTS, ESPECIALLY IF IT'S
10 CLEAR THAT THERE'S A SERIES OF RELATED TRANSACTIONS.

11 **THE COURT:** NO. THAT WAS ONLY -- IN THAT CASE
12 JACOBSON WAS THE ONE WHERE THE GOVERNMENT SOLICITED HIM 27 TIMES
13 IN A ROW TO BUY CHILD PORNOGRAPHY, AND FINALLY THE GUY GAVE IN.
14 IF EVER THERE WAS OUTRAGEOUS GOVERNMENT CONDUCT, THAT WAS IT.

15 IN ANY EVENT, PREDISPOSITION WAS THE ISSUE, AND IT
16 JUST CAN'T BE THE CASE THAT -- IT JUST CAN'T BE THE CASE THAT
17 INDUCEMENT FOR ONE TRANSACTION NECESSARILY MEANS THEY WERE ALL
18 INDUCED.

19 FOR EXAMPLE, WE KNOW FOR A FACT IN OUR CASE THE
20 INFORMANT, MICKEY, WAS NOT PRESENT AT A LOT -- A NUMBER OF THESE
21 TRANSACTIONS.

22 **MR. CHAZIN:** NOT A NUMBER. ONE.

23 **THE COURT:** AT LEAST TWO.

24 **MR. LEUNG:** AT LEAST TWO, YOUR HONOR.

25 **THE COURT:** AT LEAST TWO. I THINK IT WAS THREE.

1 IN ANY EVENT, HE WAS NOT PRESENT. THERE WERE
2 MULTIPLE CARS SOLD ON THOSE OCCASIONS.

3 MR. CHAZIN: WE DO KNOW HE --

4 THE COURT: WHAT WAS THE INDUCEMENT?

5 MR. CHAZIN: WE DO KNOW HE WAS PRESENT AT THE THEFTS.
6 THERE'S A CONTINUING COURSE OF CONDUCT, HIS INVOLVEMENT.

7 THE COURT: YES, HE WAS INVOLVED. AS WE ALL KNOW,
8 STEALING CARS IS NOT THE OFFENSE.

9 MR. LEUNG: THAT'S CORRECT.

10 THE COURT: IT'S THE EXPORT. THIS IS A POINT YOU
11 MADE.

12 MR. CHAZIN: THE INDUCEMENT IS WHAT WE'RE TALKING
13 ABOUT HERE, AND IF THE INFORMANT IS PRESENT THROUGHOUT THE
14 TRANSACTIONS BY WAY OF HIS PROVIDING THE MEANS AND THE EXPERTISE
15 TO BE ABLE TO STEAL THE CARS TO BEGIN WITH, THEN THERE'S CLEARLY
16 GOVERNMENT INVOLVEMENT IN THAT RESPECT.

17 THE COURT: LET ME TELL YOU HOW I SEE THE LAW ON
18 THIS. WE EACH SPENT A HUGE AMOUNT OF TIME ON THIS SINCE
19 YESTERDAY.

20 IT'S TRUE IN '92 OR '93 JACOBSON IN THE SUPREME
21 COURT, I THINK VERY CORRECTLY, RULED THAT THE -- ON THAT FACT
22 PATTERN WHERE THE GOVERNMENT SENT 27 SOLICITATIONS IN A ROW TO
23 TRY TO GET THE GUY TO BUY CHILD PORNOGRAPHY, AND FINALLY HE DID,
24 THAT THE GOVERNMENT HAD TO PROVE THAT HE WAS PREDISPOSED BEFORE
25 THE GOVERNMENT EVER TRIED TO SOLICIT HIM. SO THAT'S WHY I SAID

1 PREDISPOSED, YOU'RE RIGHT ON THAT PART.

2 BUT WITH RESPECT TO THE OTHER PRONG OF
3 NON-INDUCEMENT, THAT WAS NOT THE ISSUE IN THAT CASE, AND THERE
4 ARE PLENTY OF NINTH CIRCUIT DECISIONS PRECEDING JACOBSON, I
5 THINK THAT'S CORRECT, BUT THEY'VE NEVER BEEN CHANGED, AND THEY
6 CLEARLY STATE THAT AS TO INDUCEMENT, THAT YOU COULD FIND THAT
7 SOME TRANSACTIONS WERE INDUCED AND OTHER TRANSACTIONS WERE NOT
8 INDUCED BY THE GOVERNMENT. SO I THINK THAT HAS TO BE THE STATE
9 OF THE LAW IN THE NINTH CIRCUIT.

10 AND I MUST SAY, IN MY OWN VIEW, THAT IS THE ONLY
11 LOGICAL WAY TO PROCEED, BECAUSE THE FACTS AND CIRCUMSTANCES AS
12 THIS VERY CASE, OUR VERY CASE, ILLUSTRATES COULD VARY FROM
13 TRANSACTION TO TRANSACTION.

14 SO I THINK -- I DISAGREE WITH YOU, MR. CHAZIN, THAT
15 JACOBSON GOES AS FAR AS YOU WOULD LIKE FOR IT TO GO. POSSIBLY
16 IN THE NINTH CIRCUIT, THE NINTH CIRCUIT WILL AGREE WITH YOU,
17 DEPENDING ON WHAT THE VOTE OF THE PANEL IS. I'M GIVING THIS MY
18 BEST SHOT ON WHAT I SEE THE LAW TO BE HERE. I MUST DISAGREE
19 WITH YOU. YOU MADE YOUR POINT FOR THE RECORD. I'VE FULLY
20 CONSIDERED THAT POINT.

21 **MR. CHAZIN:** YOUR HONOR, IF I CAN JUST SAY TWO MORE
22 THINGS?

23 **THE COURT:** ALL RIGHT.

24 **MR. CHAZIN:** NUMBER ONE IS WHAT WE HAD PROPOSED AS AN
25 ALTERNATIVE, I BELIEVE, ADDRESSES WHAT THE COURT AT LEAST -- AT

1 LEAST THE COURT'S DETERMINATION AS TO WHAT, PERHAPS, THE LAW IS,
2 BY OFFERING TO THE JURY THAT THE COURT MAY FIND, WHICH GIVES THE
3 JURY AN ALTERNATIVE.

4 **THE COURT:** WHERE IS THAT? MAY FIND WHAT? SHOW ME
5 THE SENTENCE YOU WANT ME TO CHANGE.

6 **MR. CHAZIN:** IF YOU LOOK AT -- IT'S IN OUR
7 CONCLUSION. IT STARTS OUT THE BOTTOM OF PAGE 7:

8 "IN THE ALTERNATIVE, MR. NOCHEZ RESPECTFULLY
9 REQUESTS THE COURT INSTRUCT THE JURY AS FOLLOWS:
10 'YOU MAY FIND THE DEFENDANT WAS ENTRAPPED IN THE
11 FIRST INSTANCE AND, THEREFORE, ALL CRIMINAL ACTS
12 FOLLOWING WERE THE SUBJECT OF THE INITIAL
13 ENTRAPMENT'."

14 **THE COURT:** THAT'S WHAT I SAY HERE, I SAY IN PART,
15 "YOU MAY FIND DEFENDANT WAS INDUCED BY ONE OR MORE GOVERNMENT
16 AGENTS TO COMMIT ALL THE COUNTS, OR NONE OF THEM, OR SOME OF
17 THEM, DEPENDING ON HOW YOU EVALUATE THE EVIDENCE."

18 **MR. LEUNG:** YOUR HONOR, WE WOULD NOTE THAT THE
19 DEFENDANT'S ALTERNATIVE PROPOSAL STILL COMMITS THE FATAL LEGAL
20 ERROR OF CONFLATING BOTH ELEMENTS OF ENTRAPMENT WITH
21 PREDISPOSITION. ENTRAPMENT IS CLEARLY TWO ELEMENTS. MR. CHAZIN
22 SORT OF GLOSSES OVER THE FACT THERE ARE TWO ELEMENTS. HE TAKES
23 THE CASE LAW ON PREDISPOSITION AND TRIES TO BOOTSTRAP IT TO
24 ENTRAPMENT AS A WHOLE.

25 **MR. CHAZIN:** I WILL SAY THAT THE CASES THAT HAVE ALL

1 SPOKEN ON THIS REALLY DO NOT SEPARATE OUT INDUCEMENT. THEY
2 DISCUSS BOTH PREDISPOSITION AND INDUCEMENT, SEEMINGLY IN THE
3 SAME BREATH.

4 **THE COURT:** I CAN SEE THAT. THAT MAKES IT A LITTLE
5 BIT HARDER -- NOT A LITTLE BIT. IT MAKES IT HARDER WHEN YOU GO
6 BACK AND READ THE CASES, AND WE HAVE DONE THAT. WE HAVE GONE
7 BACK IN THE LAST 12 HOURS AND LOOKED AT THE FACT PATTERN
8 INVOLVED IN THE CASES TO SEE WHAT THEY WERE REALLY TALKING ABOUT
9 THERE. AND I'M CONVINCED TO A MORAL CERTAINTY THAT WHAT I HAVE
10 LAID OUT HERE IS A COMPLETE RECONCILIATION OF THE WAY THE
11 DECISIONS HAVE COME OUT, EVEN THOUGH IN MY -- EVEN THOUGH WE'RE
12 UNFORTUNATE THAT NO ONE HAS PARSED IT EXACTLY THE WAY I HAVE
13 HERE IN SO MANY EXPRESSED TERMS. YET, THAT IS EXACTLY WHAT HAS
14 BEEN GOING ON IN THE CASE LAW. SO I FEEL -- I FEEL THIS IS THE
15 CORRECT ANSWER. ALL RIGHT.

16 **MR. CHAZIN:** YOUR HONOR, I WOULD SAY THAT IF THE
17 COURT IS INSISTING ON TAKING THIS APPROACH TO, IN A WAY, PARSE
18 OUT INDUCEMENT AND PROVIDE ALTERNATIVES TO THE JURY, WHICH I
19 THINK THE COURT PROBABLY PICKED UP FROM THE DAVIS OPINION, WHICH
20 THEN FOLLOWED AND CITED TO THE NORTH INSTRUCTION, THE
21 INSTRUCTION IN NORTH, I THINK THAT'S WHERE THE COURT IS GETTING
22 THIS FROM, WHERE IT'S PROVIDING ALTERNATIVES, THE NORTH
23 INSTRUCTION, WHICH IS SET FORTH IN -- I'M SORRY. AT LEAST I
24 HAVE IT IN SLAUGHTER HERE, THE CASE THAT WE'VE CITED. IT HAS
25 THE SPECIFIC INSTRUCTION THAT WAS USED AND WAS SANCTIONED BY

1 SLAUGHTER. AND I THINK THAT'S WHAT THE COURT IS PROPOSING HERE.
2 I THINK THE WORDING FROM THE NORTH INSTRUCTION IS A LITTLE MORE
3 CLEAR IN THAT RECORD, AND I WOULD ASK IT THEN --

4 **THE COURT:** LET ME SEE WHAT YOU -- HAND IT UP TO ME.
5 I REMEMBER THE CONCEPT, AND I WAS TRYING TO DO THE CONCEPT.

6 **MR. LEUNG:** JUST TO WARN THE COURT, THE NORTH
7 INSTRUCTION, I BELIEVE, WAS DISFAVORED BY THE NINTH CIRCUIT IN
8 DAVIS. MR. CHAZIN WOULD SEEK TO TAKE THE FIRST PART OF IT, AND
9 HIS RELIANCE UPON IT, I BELIEVE, WOULD BE INAPPROPRIATE.

10 **MR. CHAZIN:** WELL, IT WAS -- IN SLAUGHTER IT WAS
11 ACTUALLY --

12 **THE COURT:** I DON'T UNDERSTAND WHY THIS IS BETTER FOR
13 YOU OR WORSE FOR YOU. I THINK MY LANGUAGE IS BETTER. I'M GOING
14 WITH MY LANGUAGE. I DON'T THINK THERE'S ANY -- I DON'T GET THE
15 POINT.

16 ALL RIGHT. I NEED TO -- CAN I GO OFF THE RECORD FOR
17 ONE SECOND? THERE ARE A LOT OF PEOPLE IN THE COURTROOM. I NEED
18 TO GIVE THEM AN ANNOUNCEMENT.

19 (PAUSE IN PROCEEDINGS.)

20 **THE COURT:** BACK ON THE RECORD. AS SOON AS THE JURY
21 IS HERE, WE WILL CALL THEM OUT, AND I'M GOING TO THE SUPPLEMENT
22 INSTRUCTION FIRST. THEN I'M GOING TO FOLLOW IT WITH THE
23 READBACK. DO YOU HAVE THE READBACK READY TO GO?

24 **MR. LEUNG:** WE DO, YOUR HONOR.

25 **THE COURT:** ALL RIGHT. I PROPOSE THE COURT REPORTER

1 READ IT UNLESS YOU HAVE A BETTER PLAN.

2 MR. CHAZIN: NO.

3 THE COURT: SO YOU HAVE IT READY TO GIVE TO JOAN?

4 MR. LEUNG: WE DO, YOUR HONOR.

5 THE COURT: JOAN, ARE YOU READY TO DO THAT?

6 THE REPORTER: I'M READY.

7 MR. CHAZIN: YOUR HONOR, I'M CONCERNED ABOUT CALLING
8 IT A SUPPLEMENTAL INSTRUCTION AT THIS POINT, AS OPPOSED TO JUST
9 RESPONDING TO THEIR QUESTION. I THINK IT'S LATE TO ADD
10 INSTRUCTIONS.

11 THE COURT: THAT'S NOT TRUE. COME ON. I'M NOT GOING
12 TO CHANGE THIS. I'VE SEEN SO MANY CASES WHERE A SUPPLEMENTAL
13 INSTRUCTION IS GIVEN BASED UPON A QUESTION FROM THE JURY. THAT
14 IS JUST BOGUS. HOW WOULD THERE BE ANY POSSIBLE PREJUDICE FROM
15 CALLING IT SUPPLEMENTAL INSTRUCTION, AND I SPECIFICALLY SAY IT'S
16 IN RESPONSE TO THEIR QUESTION?

17 MR. CHAZIN: I'M JUST NOT FAMILIAR WITH THAT, IN MY
18 EXPERIENCE, YOUR HONOR.

19 THE COURT: VERY WELL. I THINK IT IS A NORMAL
20 PROCEDURE. DOES THE GOVERNMENT HAVE ANY OBJECTION?

21 MR. LEUNG: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. NOW, DO YOU HAVE ANY
23 OBJECTION TO ME SENDING THIS INTO THE JURY ROOM?

24 MR. LEUNG: NO, YOUR HONOR.

25 MR. CHAZIN: WE PREFER DIFFERENT LANGUAGE. I GUESS

1 IN THAT RESPECT WE DO OBJECT.

2 **THE COURT:** BUT THAT'S YOUR ONLY OBJECTION. THEN I
3 AM GOING TO SEND IT IN. WE NEED TO MAKE COPIES TO SEND IN TO
4 THE JURY. WE'RE NOW READY TO DO THE READBACK.

5 **MR. LEUNG:** YES, YOUR HONOR.

6 **THE COURT:** ALL RIGHT. LET'S BRING IN OUR JURY.

7 **THE CLERK:** I DON'T THINK THEY'RE ALL HERE. I WILL
8 DOUBLE-CHECK.

9 (PAUSE IN PROCEEDINGS.)

10 **THE CLERK:** THERE ARE ONLY SIX OF THEM HERE.

11 (RECESS TAKEN.)

12 **THE COURT:** ALL RIGHT. LET'S SEE IF THE JURY IS
13 PRESENT. IT'S NOW 8:00 O'CLOCK.

14 **THE CLERK:** STILL MISSING ONE.

15 **THE COURT:** ALL RIGHT. WE'LL TAKE ABOUT A
16 FIVE-MINUTE RECESS.

17 (RECESS TAKEN.)

18 **THE COURT:** THE JURY IS READY. ARE WE READY TO
19 PROCEED OUT HERE?

20 **MR. LEUNG:** COULD WE HAVE TWO MINUTES, YOUR HONOR?
21 MS. WONG, IN LIGHT OF HER CONDITION, HAD TO RUN TO THE
22 FACILITIES.

23 **THE COURT:** THERE SHE IS.

24 **MS. WONG:** SORRY.

25 **THE COURT:** ARE OUR INTERPRETERS READY?

1 **THE INTERPRETER:** YES, SIR.

2 **THE COURT:** IS EVERYONE HERE WHO NEEDS TO BE HERE? I
3 THINK SO. LET'S BRING IN THE JURY.

4 (THE JURY ENTERED THE COURTROOM.)

5 **THE COURT:** WELCOME BACK, PLEASE HAVE A SEAT.

6 I KNOW YOU'RE WORKING HARD, AND YOU SENT OUT A COUPLE
7 OF NOTES THAT WE ARE NOW PREPARED TO RESPOND TO. AND THE FIRST
8 CONCERNS THE QUESTION THAT YOU ASKED ABOUT ENTRAPMENT, AND YOUR
9 QUESTION WAS:

10 "IF ENTRAPMENT IS DETERMINED FOR THE FIRST
11 CHARGE, DOES ENTRAPMENT APPLY TO ALL THE
12 CHARGES?"

13 SO TO ANSWER THAT QUESTION, AFTER HAVING CONSULTED
14 WITH THE LAWYERS, I HAVE WRITTEN OUT A SUPPLEMENTAL INSTRUCTION
15 THAT TRIES TO ANSWER YOUR QUESTION. SO I'M NOW GOING TO READ
16 IT, AND THEN I WILL SEND IN TO THE JURY WHAT I READ TO YOU. SO
17 PLEASE LISTEN CAREFULLY AS I READ THROUGH THIS.

18 TO PROVE THAT DEFENDANT WAS NOT ENTRAPPED, THE
19 GOVERNMENT HAS THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT
20 THAT, ONE, DEFENDANT WAS PREDISPOSED TO COMMIT THE CRIME BEFORE
21 BEING CONTACTED BY GOVERNMENT AGENTS, OR, TWO, DEFENDANT WAS NOT
22 INDUCED BY GOVERNMENT AGENTS TO COMMIT THE CRIME. THE
23 GOVERNMENT DOES NOT HAVE TO PROVE BOTH PREDISPOSITION AND
24 NON-INDUCEMENT, BUT IT MUST PROVE ONE OR THE OTHER.

25 YOU HAVE ASKED WHETHER, IF ENTRAPMENT IS DETERMINED

1 FOR THE FIRST CHARGE, DOES ENTRAPMENT APPLY TO ALL THE CHARGES?

2 THE ANSWER TO THIS QUESTION MUST FOCUS SEPARATELY ON
3 THE QUESTIONS OF PREDISPOSITION AND NON-INDUCEMENT.

4 WITH RESPECT TO PREDISPOSITION, THE GOVERNMENT MUST
5 PROVE BEYOND A REASONABLE DOUBT THAT DEFENDANT WAS PREDISPOSED
6 TO COMMIT THE CRIMINAL ACTS PRIOR TO FIRST BEING APPROACHED BY
7 ANY GOVERNMENT AGENT. SO IF YOU FIND PREDISPOSITION UNPROVEN
8 FOR THE EARLIEST COUNT, THEN THAT FINDING MUST APPLY TO ALL
9 COUNTS.

10 WITH RESPECT TO NON-INDUCEMENT, HOWEVER, THE ISSUE
11 MUST BE DECIDED TRANSACTION BY TRANSACTION. FOR EXAMPLE, EVEN
12 IF DEFENDANT WAS INDUCED TO COMMIT THE FIRST TRANSACTION AND WAS
13 THEREBY ENTRAPPED AS TO THAT TRANSACTION, HE MAY OR MAY NOT HAVE
14 BEEN INDUCED TO COMMIT LATER TRANSACTIONS, DEPENDING ON HOW YOU
15 EVALUATE THE EVIDENCE.

16 YOU MAY DECIDE THAT DEFENDANT WAS INDUCED BY ONE OR
17 MORE GOVERNMENT AGENTS TO COMMIT ALL OF THE COUNTS, OR NONE OF
18 THEM, OR SOME OF THEM, DEPENDING ON HOW YOU EVALUATE THE
19 EVIDENCE. YOU MUST KEEP IN MIND AND APPLY THE REST OF THE
20 ENTRAPMENT INSTRUCTIONS THAT I HAVE ALREADY GIVEN YOU, AS WELL
21 AS ALL OF THE INSTRUCTIONS.

22 ALL RIGHT. SO THAT'S THE SUPPLEMENTAL INSTRUCTION.

23 NOW WE'RE GOING TO HAVE THE READBACK THAT YOU
24 REQUESTED. ONE THING I SAID TO YOU IN A NOTE YESTERDAY NEEDS TO
25 BE CORRECTED, OR AT LEAST THE IMPLICATION. I ASKED, I THINK,

1 WHETHER YOU COULD IDENTIFY SOME SMALLER SEGMENT. AND WE HAVE
2 DETERMINED THAT THE LAW SEEMS TO BE, THOUGH, THAT WE HAVE TO --
3 IF YOU REQUEST ANY PART OF ANY WITNESS, WE HAVE TO READ IT ALL
4 BACK FOR THAT WITNESS. SO IF YOU WERE TO REQUEST A LONG
5 WITNESS, WE WOULD READ THE ENTIRE THING BACK TO YOU. IF YOU
6 REQUEST A SHORT WITNESS, WE WILL READ BACK THE SHORT WITNESS.
7 SO MERENDINO IS KIND OF IN THE MIDDLE, ISN'T HE? YOU'RE GOING
8 TO GET TO HEAR ALL OF WHAT MERENDINO SAID IN HIS TESTIMONY.

9 AT THIS TIME, THE WAY THIS WILL WORK IS THAT OUR
10 EXCELLENT COURT REPORTER WILL READ BACK, AND SHE'LL SAY,
11 QUESTION, ANSWER, QUESTION, ANSWER. THAT WAY IT WILL KEEP
12 STRAIGHT WHO'S TALKING WHEN THE TESTIMONY COMES IN.

13 JOAN, ARE YOU READY TO PROCEED?

14 **THE REPORTER:** YES.

15 **THE COURT:** IS THERE ANYTHING MORE I NEED TO SAY, THE
16 LAWYERS WANT ME TO SAY BEFORE WE LET THE COURT REPORTER LIFT HER
17 FINGERS UP AND START READING?

18 **MR. LEUNG:** NOT FROM THE GOVERNMENT. THANK YOU.

19 (THE TESTIMONY OF CHRISTOPHER MERENDINO WAS
20 READ TO THE JURY.)

21 **MR. CHAZIN:** YOUR HONOR, COULD WE HAVE A BRIEF
22 SIDEBAR?

23 **THE COURT:** YES.

24 (SIDEBAR DISCUSSIONS HELD AS FOLLOWS:)

25 **THE COURT:** WHAT'S THE ISSUE?

1 **MR. CHAZIN:** I DON'T KNOW IF THERE WAS POSSIBLY A
2 MISTAKE IN THE TRANSCRIPT, OR IF I SAID THE WORD "CENTRALLY."
3 THERE'S A MISTAKE IN THE TRANSCRIPT. ON PAGE 935, LINE 19, IT
4 SAID WHETHER HE COULD BE CHARGED CRIMINALLY -- THERE WAS A
5 MISTAKE. IT SAID "CENTRALLY." I WANTED THAT CLARIFIED FOR THE
6 JURY.

7 SECOND IS --

8 **THE COURT:** LET'S DO IT THIS WAY. SHOW ME THE PAGE.

9 **MR. CHAZIN:** AND ALSO (INDICATING).

10 **THE COURT:** THAT MAY BE THE WAY IT WAS SPOKEN BY THE
11 LAWYER OR THE WITNESS.

12 I WILL READ THIS QUESTION BACK MYSELF, AND I WILL SAY
13 THAT EVERYONE IS IN AGREEMENT THAT THE WORD "CENTRALLY" SHOULD
14 HAVE BEEN "CRIMINALLY."

15 (OFF THE RECORD COMMENT BY THE REPORTER.)

16 **THE COURT:** DOES EVERYONE AGREE IT SHOULD BE
17 FEDERALLY?

18 **MR. CHAZIN:** YES.

19 **THE COURT:** I'LL READ THAT ONE QUESTION AND ANSWER
20 AND CLARIFY IT.

21 (END OF SIDEBAR DISCUSSION.)

22 **THE COURT:** LAWYERS ARE IN AGREEMENT, AND I AM, TOO,
23 THAT THERE WAS A ONE-WORD MISTAKE IN THE TRANSCRIPTION.

24 YOU HEARD A MOMENT AGO AS PART OF THE READBACK THIS
25 QUESTION:

1 "QUESTION: DID YOU ALSO INFORM HIM HE COULD
2 BE CHARGED CENTRALLY?"
3 EVERYONE IS IN AGREEMENT THAT WHAT WAS ACTUALLY ASKED
4 IS THE FOLLOWING AND THE WAY YOU SHOULD ACCEPT IT:

5 "QUESTION: DID YOU ALSO INFORM HIM THAT HE
6 COULD BE CHARGED FEDERALLY?"
7 TO WHICH THE ANSWER WAS:

8 "ANSWER: I DON'T RECALL SPECIFICALLY
9 INDICATING THAT, BASED ON OUR INITIAL
10 CONVERSATION."

11 **THE COURT:** ALL RIGHT. DONE ON THAT.

12 **MR. CHAZIN:** THANK YOU, YOUR HONOR.

13 **MR. LEUNG:** FINE WITH THE GOVERNMENT, YOUR HONOR.
14 THANK YOU.

15 **THE COURT:** VERY WELL. I'M ABOUT TO SEND YOU BACK TO
16 CONTINUE YOUR DELIBERATIONS.

17 I NEED TO GIVE YOU A WORD OF CAUTION AND THAT IS THAT
18 SOMETIMES AFTER THERE'S A READBACK, THE JURY SOMEHOW GIVES --
19 BECAUSE IT'S THE MOST RECENT THING THEY'VE HEARD AND IT'S BEEN A
20 WHILE SINCE THE TRIAL ENDED AND THE TRIAL IS OVER, THAT ONE
21 READBACK GETS HEIGHTENED IMPORTANCE IN YOUR MIND.

22 OF COURSE, IT'S ALWAYS UP TO YOU TO DECIDE HOW MUCH
23 WEIGHT TO GIVE TO ANY EVIDENCE. IT'S CLEARLY YOUR PREROGATIVE.
24 BUT, AS A WORD OF CAUTION, REMEMBER THERE WAS A LOT OF OTHER
25 EVIDENCE IN THE CASE. YOU SHOULD CONSIDER ALL OF THE EVIDENCE

1 IN THE CASE, ALONG WITH WHAT YOU JUST HEARD READ BACK, AS WELL
2 AS CONSIDER ALL OF THE INSTRUCTIONS THAT I GAVE YOU EARLIER.

3 ANYTHING THE LAWYERS WANT TO ADD OR SUBTRACT FROM
4 THAT?

5 **MR. LEUNG:** NO, YOUR HONOR. THANK YOU.

6 **MR. CHAZIN:** THANK YOU.

7 **THE COURT:** VERY WELL. YOU CAN RETURN TO THE JURY
8 ROOM AND CONTINUE DELIBERATIONS.

9 DAWN, WILL YOU GIVE COPIES OF THE SUPPLEMENTAL?
10 THANK YOU. PLEASE GO IN.

11 **THE CLERK:** ALL RISE.

12 (THE JURY EXITED THE COURTROOM.)

13 **THE COURT:** ALL RIGHT. JUST STAND BY. AT THE RATE
14 WE'RE GOING, WE MAY HAVE ANOTHER NOTE. SO BE CLOSE BY. WE NEED
15 TO ADJOURN SO I CAN DO THE OTHER CALENDAR, AND WE WILL START
16 WITH THE CRIMINAL -- I MEAN -- THE REGULAR CALENDAR IN TEN
17 MINUTES. ALL RIGHT.

18 **MR. LEUNG:** THANK YOU, YOUR HONOR.

19 **MR. CHAZIN:** THANK YOU.

20 (RECESS TAKEN; JURY CONTINUES
21 DELIBERATIONS.)

22 **THE COURT:** BACK ON THE RECORD IN OUR CASE.

23 **THE INTERPRETER:** WE HAVE BOTH INTERPRETERS PRESENT,
24 MELINDA BASKER AND NINA SAFDIE, YOUR HONOR.

25 **THE COURT:** MR. CHAZIN, ARE YOU READY TO GO?

1 **MR. CHAZIN:** MR. SAFAI, I WAS HOPING TO HAVE HERE FOR
2 THE VERDICT. HE'S ABOUT, I WOULD SAY, TEN MINUTES AWAY.

3 **THE COURT:** WE CAN'T WAIT THAT LONG. IT'S JUST NOT
4 FAIR TO THE JURY. HE SHOULD HAVE BEEN HERE. ALL RIGHT.

5 I HAVE BEEN TOLD THEY HAVE A VERDICT. I HAVE NOT
6 SEEN THE NOTE MYSELF, BUT CAN I BRING THE JURY IN AND ASK THEM
7 IF THEY'VE REACHED A VERDICT?

8 **MR. LEUNG:** THAT'S FINE WITH THE GOVERNMENT, YOUR
9 HONOR.

10 **MR. CHAZIN:** YES.

11 **THE COURT:** ALL RIGHT. DAWN, LET'S DO THAT.

12 (THE JURY ENTERED THE COURTROOM.)

13 **THE COURT:** WELCOME BACK. PLEASE HAVE A SEAT.

14 MS. TURNER, YOU'RE OUR FOREPERSON, CORRECT?

15 **FOREPERSON TURNER:** I AM.

16 **THE COURT:** IS IT TRUE YOU HAVE REACHED A UNANIMOUS
17 VERDICT?

18 **FOREPERSON TURNER:** WE HAVE.

19 **THE COURT:** I AM GOING TO ASK YOU TO HAND TO THE
20 MARSHAL THE ENVELOPE, AND HE WILL HAND IT TO ME.

21 WHAT I'M GOING TO DO, IN A MOMENT I'LL OPEN THIS UP
22 TO SEE IF IT IS IN PROPER FORM. IF IT IS IN PROPER FORM, I
23 WOULD ASK THE CLERK TO READ THE VERDICT.

24 BEFORE I DO THAT, I WANT TO SAY, WITHOUT KNOWING HOW
25 YOU HAVE COME OUT ON THIS, BECAUSE WHAT I'M ABOUT TO SAY HAS

1 NOTHING TO DO WITH WHICH WAY YOU CAME OUT, BUT IS TO THANK YOU
2 FOR YOUR SERVICE IN THIS CASE. I WILL HAVE MORE TO SAY TO YOU
3 ON THAT AFTER WE RECEIVE THE VERDICT, BUT I WANT YOU TO KNOW
4 THAT YOUR SERVICE TO YOUR COUNTRY IS MOST APPRECIATED, AND IT
5 MAKES NO DIFFERENCE WHICH WAY YOU HAVE DECIDED THE CASE. YOU
6 WORKED HARD ON IT. SO THANK YOU FOR THAT.

7 ALL RIGHT. BEAR WITH ME.

8 NOW, PLEASE LISTEN AS THE CLERK WILL READ THE
9 VERDICT, BECAUSE I WILL ASK YOU ALL AT THE END IF IT REPRESENTS
10 YOUR INDIVIDUAL VERDICT AS WELL.

11 ALL RIGHT. THE DEFENDANT WILL LISTEN, AS WELL AS ALL
12 COUNSEL. THE CLERK WILL NOW READ THE VERDICT.

13 **THE CLERK:** THANK YOU, YOUR HONOR.

14 IT'S UNITED STATES VERSUS RODIL NOCHEZ.

15 LADIES AND GENTLEMEN OF THE JURY, LISTEN TO YOUR
16 VERDICT AS IT WILL STAND RECORDED.

17 QUESTION NUMBER ONE: HAS THE GOVERNMENT PROVEN
18 BEYOND A REASONABLE DOUBT THAT DEFENDANT IS GUILTY OF ATTEMPTED
19 EXPORTATION AS CHARGED IN COUNT 50?

20 ANSWER: NO, NOT GUILTY.

21 QUESTION TWO: HAS THE GOVERNMENT PROVEN BEYOND A
22 REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY OF ATTEMPTED
23 EXPORTATION AS CHARGED IN COUNT 51?

24 ANSWER: NO, NOT GUILTY.

25 QUESTION NUMBER THREE: HAS THE GOVERNMENT PROVEN

1 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY OF
2 ATTEMPTED EXPORTATION AS CHARGED IN COUNT 52?

3 ANSWER: NO, NOT GUILTY.

4 QUESTION NUMBER FOUR: HAS THE GOVERNMENT PROVEN
5 BEYOND A REASONABLE DOUBT THAT DEFENDANT IS GUILTY OF ATTEMPTED
6 EXPORTATION AS CHARGED IN COUNT 56?

7 ANSWER: NO, NOT GUILTY.

8 QUESTION FIVE: HAS THE GOVERNMENT PROVEN BEYOND A
9 REASONABLE DOUBT THAT DEFENDANT IS GUILTY OF ATTEMPTED
10 EXPORTATION AS CHARGED IN COUNT 57?

11 ANSWER: NO NOT GUILTY.

12 QUESTION SIX: HAS THE GOVERNMENT PROVEN BEYOND A
13 REASONABLE DOUBT THAT DEFENDANT IS GUILTY OF ATTEMPTED
14 EXPORTATION AS CHARGED IN COUNT 58?

15 ANSWER: NO, NOT GUILTY.

16 QUESTION SEVEN: HAS THE GOVERNMENT PROVEN BEYOND A
17 REASONABLE DOUBT THAT DEFENDANT IS GUILTY OF ATTEMPTED
18 EXPORTATION AS CHARGED IN COUNT 59?

19 ANSWER: NO, NOT GUILTY.

20 QUESTION NUMBER EIGHT: HAS THE GOVERNMENT PROVEN
21 BEYOND A REASONABLE DOUBT THAT DEFENDANT IS GUILTY OF ATTEMPTED
22 EXPORTATION AS CHARGED IN COUNT NUMBER 60?

23 ANSWER: NO, NOT GUILTY.

24 SIGNED AND DATED BY THE FOREPERSON, MS. TURNER, ON
25 MARCH 11, 2010.

1 **THE COURT:** ALL RIGHT. PLEASE POLL THE JURY.

2 **THE CLERK:** OKAY, YOUR HONOR.

3 TERRIS STORNETTA, IS THE VERDICT READ YOUR VERDICT?

4 **JUROR STORNETTA:** YES.

5 **THE CLERK:** KATHY TURNER, IS THE VERDICT READ YOUR
6 VERDICT?

7 **FOREPERSON TURNER:** YES.

8 **THE CLERK:** MARY PUGH, IS THE VERDICT READ YOUR
9 VERDICT?

10 **JUROR PUGH:** YES.

11 **THE CLERK:** KAREN YU, IS THE VERDICT READ YOUR
12 VERDICT?

13 **JUROR YU:** YES.

14 **THE CLERK:** RELIA JOHNSON, IS THE VERDICT READ YOUR
15 VERDICT?

16 **JUROR JOHNSON:** YES.

17 **THE CLERK:** KARL LAUFF, IS THE VERDICT READ YOUR
18 VERDICT?

19 **JUROR LAUFF:** YES.

20 **THE CLERK:** MARYLYNN MONTGOMERY, IS THE VERDICT READ
21 YOUR VERDICT?

22 **JUROR MONTGOMERY:** YES.

23 **THE CLERK:** DELANIE BUETTELL, IS THE VERDICT READ
24 YOUR VERDICT?

25 **JUROR BUETTELL:** YES.

1 **THE CLERK:** JACQUELINE?

2 **JUROR PALHEGYI:** PALHEGYI.

3 **THE CLERK:** THANK YOU. PALHEGYI. IS THE VERDICT
4 READ YOUR VERDICT?

5 **JUROR PALHEGYI:** YES.

6 **THE CLERK:** PAULA CLARKE, IS THE VERDICT READ YOUR
7 VERDICT?

8 **JUROR CLARKE:** YES.

9 **THE CLERK:** KIM-ANH YOSHI, IS THE VERDICT READ YOUR
10 VERDICT?

11 **JUROR YOSHI:** YES.

12 **THE CLERK:** NOAH GEPHART, IS THE VERDICT READ YOUR
13 VERDICT?

14 **JUROR GEPHART:** YES.

15 **THE CLERK:** YOUR HONOR, THE VERDICT IS UNANIMOUS.

16 **THE COURT:** VERY WELL. THE CLERK WILL ENTER THE
17 VERDICT IN THE RECORDS OF THE COURT.

18 MR. NOCHEZ, YOU HAVE BEEN ACQUITTED OF ALL CHARGES.
19 YOU ARE FREE TO GO, OF COURSE, AS SOON AS WE'RE DONE HERE.

20 AND IS THERE ANY REASON WHY THE COURT MAY NOT
21 DISCHARGE THE JURY AT THIS TIME?

22 **MR. LEUNG:** NOT FROM THE GOVERNMENT, YOUR HONOR.

23 **MR. CHAZIN:** I JUST WANT TO SAY THANK YOU VERY MUCH
24 TO THE JURY. IF THEY HAVE ANY INTEREST IN TALKING ABOUT THE
25 CASE AFTER --

1 **THE COURT:** I WILL COVER THAT WITH THEM.

2 **MR. CHAZIN:** THANK YOU, YOUR HONOR.

3 **THE COURT:** VERY WELL.

4 NOW, LET ME THANK YOU AGAIN FOR YOUR SERVICE.

5 EVERYONE IN THE COURTROOM KNOWS, INCLUDING OUR MOST EXCELLENT
6 UNITED STATES ATTORNEYS, THAT JUSTICE IS DONE WHEN THERE HAS
7 BEEN A FAIR TRIAL AND A FAIR VERDICT RENDERED. AND I THINK EVEN
8 THOUGH YOU RULED AGAINST THE GOVERNMENT IN THIS CASE, THEY WOULD
9 BE ONE OF THE FIRST TO THANK YOU FOR YOUR SERVICE IN THIS CASE.

10 AND THE COURT THANKS YOU FOR YOUR SERVICE IN THIS
11 CASE, BECAUSE YOU HAVE BEEN TERRIFIC. YOU HAVE COME TO COURT
12 EARLY EVERY DAY. YOU'VE ALLOWED US TO MOVE REASONABLY QUICKLY
13 THROUGH THE EVIDENCE. YOU'VE PAID CLOSE ATTENTION, AND THAT'S
14 WONDERFUL. I WISH EVERY JURY THAT I HAD WAS AS CONSCIENTIOUS AS
15 YOU HAVE BEEN.

16 NOW, I'M GOING TO DISCHARGE YOU AT THIS TIME
17 OFFICIALLY. YOU ARE NOW BEING SENT BACK TO BEING ORDINARY
18 CIVILIANS AGAIN. YOU WILL GET TO GO ONE LAST TIME INTO THE JURY
19 ROOM AND TURN IN YOUR BADGES, AND GET TO GO HOME.

20 BEFORE YOU DO THAT, I WOULD LIKE TO INVITE YOU INTO
21 MY CHAMBERS TO SEE WHAT IT'S LIKE BACK THERE, BECAUSE YOU WALK
22 BY IT AND HAVEN'T HAD A CHANCE TO DO THAT. I WOULD LIKE TO
23 SHAKE EACH OF YOUR HANDS INDIVIDUALLY. I AM NOT GOING TO TALK
24 ABOUT THE CASE WITH YOU, THOUGH I GUESS I COULD SINCE THERE'S
25 BEEN AN ACQUITTAL. I PROBABLY WON'T DO THAT.

1 BUT I WILL ADVISE YOU ABOUT WHETHER YOU SHOULD BE
2 TALKING TO THE LAWYERS OR NOT. AND, BASICALLY, IT IS GOING TO
3 BE UP TO YOU TO DECIDE WHETHER YOU WANT TO DO THAT.

4 SO AT THIS TIME, WITH THE THANKS OF THE UNITED STATES
5 DISTRICT COURT, YOU MAY STAND UP, GO BACK INTO THE JURY ROOM ONE
6 LAST TIME, AND YOU ARE DISCHARGED.

7 **THE CLERK:** ALL RISE.

8 (THE JURY EXITED THE COURTROOM.)

9 **THE COURT:** DAWN, WOULD YOU GO DECOMMISSION OUR
10 JURORS?

11 **THE CLERK:** YES.

12 **THE COURT:** EVERYONE BE SEATED. JUST ONE LAST THING.
13 I NEED THE COURTROOM FOR THE HEARING THAT I'M IN THE MIDDLE OF,
14 SO I WON'T BE ABLE TO LET YOU, AS I NORMALLY WOULD, TALK TO THE
15 JURORS IN HERE. SO I THINK THE ONLY WAY TO DO IT IS TO CATCH
16 THEM AS THEY GO BY THE ELEVATOR. IF BOTH SIDES WANT TO DO THAT,
17 THAT'S FINE. I JUST CAN'T THINK OF A BETTER, OFF THE TOP OF MY
18 HEAD, A BETTER WAY TO DO IT. IF YOU HAVE A GOOD SUGGESTION, I'M
19 ALL EARS.

20 **MR. LEUNG:** YOUR HONOR, WOULD IT BE POSSIBLE TO MEET
21 IN THE JURY ROOM?

22 **THE COURT:** YOU MEAN BACK HERE?

23 **MR. LEUNG:** YES, YOUR HONOR.

24 **THE COURT:** THAT'S A GOOD IDEA. IT WOULD JUST BE THE
25 LAWYERS, RIGHT?

1 **MR. CHAZIN:** YES.

2 **THE COURT:** I WILL TELL YOU WHAT I'LL DO, I'LL SAY
3 THE TWO LAWYERS, OR I GUESS IT WOULD BE THREE LAWYERS, WOULD
4 LIKE TO HAVE THAT OPPORTUNITY, AND I'LL LEAVE IT COMPLETELY UP
5 TO THEM.

6 **MR. LEUNG:** CERTAINLY.

7 **THE COURT:** THEN YOU'LL GET A CHANCE TO LEARN FROM
8 THEM WHAT WAS AND WAS NOT INFLUENTIAL IN THEIR DECISION. I
9 MYSELF AM CURIOUS. BUT, MR. CHAZIN, I THINK CONGRATULATIONS ARE
10 IN ORDER TO YOU. YOU DON'T GET MANY ACQUITTALS IN THE
11 COURTHOUSE. YOU ARE GOING TO BE FAMOUS NOW. GOOD FOR YOU.

12 ANYWAY, I WILL -- I CAN'T SAY I WILL RECOMMEND, BUT I
13 WON'T DISCOURAGE EITHER -- I ALWAYS LIKED TO TALK TO THE JURORS
14 WHEN I WAS TRYING CASES AND FOUND IT TO BE VERY ILLUMINATING FOR
15 THE NEXT CASE.

16 SO ANY REASON WHY WE CAN'T JUST ADJOURN NOW AND HAVE
17 JUDGMENT ENTERED FOR MR. NOCHEZ IN THIS CASE?

18 **MR. LEUNG:** NO, YOUR HONOR.

19 **MR. CHAZIN:** NO. THANK YOU. I APPRECIATE THE COURT,
20 ALL THE TIME AND ENERGY. I KNOW YOU PUT A LOT INTO IT, AND WE
21 APPRECIATE IT.

22 **THE COURT:** SEE, GETTING UP EARLY IN THE MORNING,
23 MR. CHAZIN, SOMETIMES IT WORKS.

24 **MR. CHAZIN:** APPARENTLY.

25 **THE COURT:** ALL RIGHT.

1 **MR. CHAZIN:** THANK YOU.

2 (PROCEEDINGS CONCLUDED.)

CERTIFICATE OF REPORTER

I, JOAN MARIE COLUMBINI, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CR 08-0730 WHA, UNITED STATES VS. RODIL NOCHEZ, ET AL, WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

S/B JOAN MARIE COLUMBINI

JOAN MARIE COLUMBINI, CSR 5435, RPR

FRIDAY, MARCH 12, 2010

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